IN THE HIGH COURT OF DELHI

Crl.M.C.No.1845-48/2005

M/s. Metal Forgings Pvt. Ltd. & Ors..... Petitioners
! through: Mr. Kamal Mehta, Advocate

VERSUS

$ Superintendent (Preventive) ..... Respondent
^ Central Excise
through: Mr.Satish Aggarwala, Advocate

% DATE OF DECISION: 06.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (Oral)
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1. Petition under Section 482 of the Code of Criminal Procedure, 1973 prays for quashing the complaint under Section 9 of the Central Excise Act, 1944 read with Sections 193, 192 and 120-B of the IPC and the proceedings emanating out of the said complaint.

2. Briefly stated, the facts are that Sh. P.K. Khera, Superintendent, Preventive, Central Excise had filed a complaint against the company, M/s Metal Forgings (Pvt.) Ltd,

its Managing Director and 8 directors. It was inter-alia alleged in the complaint that:-

i) M/s Metal Forgings (Pvt.) Ltd is a company engaged in the manufacture of steel ingots.

ii) On 24.07.87, the Officers of the Central Excise Collectorate visited the factory of the company M/s Metal Forgings (Pvt.) Ltd situated at B-1, Maya Puri Industrial Area, New Delhi. At the time of the visit, Sh. R.K. Shrivastav, a director of the company was present in the said premises.

iii) Upon search of the said premises, incrimating documents were found which showed that the company was engaged in the large scale production of steel ingots but was accounting for only a fraction of total quantity produced and that the goods which were accounted for were cleared without payment of excise duty. The officers conducting the search seized the said documents.

iv) The company is guilty of clandestine manufacture and removal of the goods and deliberate evasion of the excise duty

3. In proof of the allegations in the complaint, reliance was placed upon the documents found in searched premises namely, scrap book and scrap memo, log sheets, bill book,

chemical analysis report register, production and dispatch books, weigh bridge register, internal gate passes, dispatch slips and daily dispatch report.

4. Taking cognizance of the said complaint, the learned ACMM summoned the accused persons to face trial for an offence under Section 9 of the Central Excise Act, 1944 read with Sections 193, 192 and 120-B of the IPC.

5. In addition to the afore-noted complaint, the Central Excise Department also initiated adjudication proceedings against the accused company. On the basis of same set of facts/allegations as canvassed in the criminal complaint, a show cause notice dated 8.4.88 was issued to the accused company. In the said show cause notice, reliance was again placed upon the documents which were referred to in the criminal complaint.

6. Holding that the accused company is guilty of clandestine manufacture and removal of 4724.35 MT of MS Ingots without payment of excise duty, vide adjudication order dated 30.3.90, the Collector Central Excise confirmed the demand of duty of Rs.14,55,709.80 and also imposed a personal penalty of Rs.3.75 lakhs on the accused company.

7. The accused company challenged the said

adjudication order by filing an appeal before the CEGAT. After duly considering the evidence produced, vide order dated 24.8.94 the CEGAT partly allowed the appeal. In appeal CEGAT confirmed the demand of duty only with regard to 738.859 MT of MS ingots and also reduced personal penalty to Rs.25,000/-.

8. Against the order dated 24.8.94 passed by the CEGAT in appeal, the accused company filed a rectification application before the CEGAT. Vide order dated 19.9.95, CEGAT set aside its earlier order dated 24.8.94 and exonerated the accused company. The findings of the CEGAT in so far they are relevant for consideration in the present case are extracted below:-

> " In the light of the above discussion, we accept the contention of the learned Counsel that the quantity of 738.859 MT represents wastage occurring at the stage of production of forgings out of ingots and set aside the duty confirmed thereon. The penalty is also set aside since duty demand itself was confirmed on a quantity which was allegedly to have been clandestinely removed which charge we have already set aside."

9. Pursuant to the order dated 19.9.95 passed by the CEGAT, vide order dated 5.1.96 the Assistant Commissioner, Central Excise directed that the penalty deposited by the accused company in terms of adjudication order dated 30.3.90 be returned to the accused company.

10. In view of the order passed by the CEGAT exonerating the accused company, accused persons filed an application for discharge. Noting the judgments of the Supreme Court in the decisions reported as *Asst. Collector of Customs Vs. L.R.Malwani* 1999 (110) ELT 317 (SC) and *Santram Paper Mills Vs. Collector of Central Excise* 1997 (96) ELT 19 (SC) and the judgment of the Andhra Pradesh High Court in the decision reported as *K.Neelakantha Rao Vs. State of Andhra Pradesh* 2000 (122) ELT 7, the ACMM dismissed the said application vide order dated 18.2.2005 holding in para 7 as under :-

> "7. From the aforesaid authorities, it is evident that the finding of adjudicating authority is not binding on this court. The prosecution in a criminal case is to be determined on its own merits as per law uninhibited by the finding of the Tribunal....."

11. Feeling aggrieved by the afore-noted order passed by the learned Metropolitan Magistrate, the accused company, its managing director and 2 directors who were impleaded as accused nos.2, 5 and 6 respectively in the complaint have approached this Court under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the complaint and proceedings emanating out of the said complaint.

12. In support of the petition, learned counsel for the

petitioner contends that the reasons given by the ACMM that in all cases irrespective of exoneration in adjudication proceedings, the criminal proceedings would continue is not correct. That the judgment of the Andhra Pradesh High Court in Neelakantha's case (supra) which has formed the basis of the judgment of the ACMM has been disagreed to by a learned Single Judge of this court in the decision reported as *Sunil Gulati v R.K.Vohra* 2007 (1) JCC 220. That with the exoneration of the petitioner in adjudication proceedings, the foundation for continuing the prosecution in the criminal complaint no longer exists for the reason adjudication proceedings and criminal prosecution are based on same set of facts/allegations.

13. On the other hand, learned counsel for the Central Excise Department urges that the mere fact that the petitioner has been exonerated in the departmental or adjudicatory proceedings will not entitle him to escape prosecution in criminal proceedings which are independently maintainable. Reliance was placed upon the following judgments :-

(i) *Asst. Collector of Customs Vs. L.R.Malwani* 1999 (110) ELT 317 (SC)

(ii) *K.Neelakantha Rao Vs. State of Andhra Pradesh*

2000 (122) ELT 7

(iii) *Santram Paper Mills Vs. Collector of Central Excise*

1997 (96) ELT 19 (SC)

14. In view of the legal position that the learned ACMM cannot recall the order summoning an accused matter was heard with reference to whether in view of order dated 19.9.95 passed by CEGAT setting aside the penalty levied vide order dated 30.3.90, order of CEGAT having attained finality, was the complaint liable to be quashed.

15. I need not deal with the rival judgments cited for the reason taking note of the various judgments on the issue including the ones noted above and especially the judgment of the Supreme Court in the *Standard Chartered Bank's* case (supra), A.K.Sikri, J. of this court in Sunil Gupta's case (supra) has held as under :-

> “25.....In fact, various cases of the Supreme Court, note whereof is taken above, deal with different situations. The principles which can be culled out from the aforesaid judgments, when all these judgments are read out harmoniously, would be the following:
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> > 1. On the same violation alleged against a person, if adjudication proceedings as well as criminal proceedings are permissible, both can be initiated simultaneously. For initiating criminal proceedings one does not have to wait for the outcome of the adjudication proceedings as the two proceedings are

independent in nature.

2. The findings in the departmental proceedings would not amount to res judicata and initiation of criminal proceedings in these circumstances can be treated as double jeopardy as they are not in the nature of "prosecution".

3. In case adjudication proceedings are decided against a person who is facing prosecution as well and the Tribunal has also upheld the findings of the adjudicators/assessing authority, that would have no bearing on the criminal proceedings and the criminal proceedings are to be determined on its own merits in accordance with law, uninhibited by the findings of the Tribunal. It is because of the reason that in so far as criminal action is concerned, it has to be proved as per the strict standards fixed for criminal cases before the criminal court by producing necessary evidence.

4. In case of converse situation namely where the accused persons are exonerated by the competent authorities/Tribunal in adjudication proceedings, one will have to see the reasons for such exoneration to determine whether these criminal proceedings could still continue. If the exoneration in departmental adjudication is on technical ground or by giving benefit of doubt and not on merits or the adjudication proceedings were on different facts, it would have no bearing on criminal proceedings. If, on the other hand, the exoneration in the adjudication proceedings is on merits and it is found that allegations are not substantiated at all and the concerned person(s) is/are innocent, and the criminal prosecution is also on the same set of facts and circumstances, the criminal prosecution cannot be allowed to continue.

> The reason is obvious criminal complaint is filed by the departmental authorities alleging violation/contravention of the provisions of the Act on the part of the accused persons. However, if the departmental authorities themselves, in adjudication proceedings, record a categorical and unambiguous finding that there is no such contravention of the provisions of the Act, it would be unjust for such departmental authorities to continue with the criminal complaint and say that there is sufficient evidence to foist the accused with criminal liability when it is stated in the departmental proceedings that ex-facie there is no such violation. The yardstick would, therefore, be to see as to whether charges in the departmental proceedings as well as criminal complaint are identical and the exoneration of the concerned person in the departmental proceedings is on merits holding that there is no contravention of the provisions of any act."

16. In the decision Mohd. Ali Jabiullah v A.K. Maurya & Ors, Crl. M.C. No.1757/05 decided on 5.11.2007 with reference to the same issue it was held as under :-

> "13. Therefore, to ascertain the effect of the exoneration in the adjudication proceedings on the criminal proceedings, in a given case it has to be seen whether :-
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> (i) The criminal prosecution is based on same set of facts/allegations and evidence which was before the adjudicating authority or not; and
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> (ii) Whether exoneration by the adjudicating authority is on merits or not;"

17. As already noted in para 5 above, both the proceedings i.e. adjudication and criminal are based upon

same set of facts/allegations and evidence.

18. After due consideration of the evidence produced by the department, the CEGAT has exonerated the accused company by returning a positive finding that the quantity of MS ingots alleged to be clandestinely manufactured and removed without payment of excise duty was in fact wastage occurring at the stage of production of forgings out of ingots. No fabrication or manipulation was found in the documents of the accused company. Since the Department has not challenged the order dated 19.9.95, the finding arrived at by CEGAT has attained finality. The order of the CEGAT exonerating the accused company is thus clearly on merits.

19. In view of the above discussion, the complaint under Section 9 of the Central Excise and Salt Act, 1944 read with Sections 193, 192 and 120-B of the IPC (Annexure – G to the petition) and the proceedings emanating out of the said complaint are quashed for the reason the departmental proceedings has resulted in the petitioners being exonerated on merits and the criminal prosecution is based on same set of facts and evidence.

20. No costs.

November 6, 2007 PRADEEP NANDRAJOG, J.
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